

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE  
AT KNOXVILLE

BOYD SMITH, NANCY SMITH, )  
JOEY SMITH, JEFFREY SMITH, )  
JILL SMITH, BESSIE HACKNEY, )  
WILLIAM GRAY, PEGGY GRAY, )  
GREGORY HOUSTON, ERNEST )  
J. NICELY, and PATRICIA NICELY, )  
)

Plaintiffs )

v. )

No. 3:04-cv-591

FIRST CENTURY BANK, )

Defendant )

and )  
)

FIRST CENTURY BANK, )  
)

Counter-Plaintiff )  
)

v. )  
)

BOYD SMITH, NANCY SMITH, )  
JOEY SMITH, JEFFREY SMITH, )  
ERNEST NICELY and PATRICIA )  
NICELY, )

Counter-Defendants )

## ORDER

For the reasons set forth in the Memorandum Opinion this day passed to the Clerk for filing, it is hereby ORDERED that the remaining prongs of the motion to dismiss [Doc. 56] filed by defendant First Century Bank (FCB) be, and the same hereby are, GRANTED whereby the following claims are DISMISSED WITH PREJUDICE against FCB:

(1) Violation of the federal Consumer Credit Protection Act, 15 U.S.C. § 1681s-2 (Counts II); and

(2) Violation of federal statutes and regulations to protect the confidentiality of consumer information, 15 U.S.C. § 6801(a), *et seq.* (Counts III).

It is further ORDERED that the following causes of action against FCB be, and the same hereby are, DISMISSED WITHOUT PREJUDICE:

(1) Violation of the Tennessee Identity Theft Deterrence Act of 1999, Tennessee Code Annotated §§ 47-18-2001, *et seq.* (Counts IV);

(2) Violation of the Tennessee Consumer Protection Act, Tennessee Code Annotated §§ 47-18-101, *et seq.* (Counts V);

(3) Violation of the Tennessee Financial Records Privacy Act, Tennessee Code Annotated §§ 45-10-101, *et seq.* (Counts VI);

- (4) Breach of fiduciary duty (Counts VII);
- (5) Conversion (Counts VIII);
- (6) Negligence (Counts IX); and
- (7) All causes of action set forth in FCB's amended counter-claim against plaintiffs Boyd Smith, Nancy Smith, Joey Smith, and Jeffrey Smith [see Doc. 13, pp.19-21].

Consequently, the only cause of action remaining for trial is one for violations of the federal Consumer Credit Protection Act, 15 U.S.C. §§ 1601, *et seq.*, set forth in Count XI by plaintiffs Williams and Peggy Sue Gray, Gregory Houston, and Patricia Nicely against FCB.

Finally, in view of the above actions, the second motion for partial summary judgment [Doc. 239] filed by FCB is hereby DENIED AS MOOT.

**E N T E R :**

**s/ James H. Jarvis**  
UNITED STATES DISTRICT JUDGE